

FOI Research for Real Life

National Freedom of Information Coalition Summit

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David Cuillier, associate professor
University of Arizona School of Journalism
cuiillier@email.arizona.edu

Yes, research *can* be practical!

On the following pages you will find examples of research studies regarding freedom of information that have useful applications for practitioners and state coalitions. These are just a sampling of the growing body of research accumulated in just the past 20 years. Here are some tips in acquiring copies of the studies, often published in peer-review studies (and therefore, ironically, difficult for the public to acquire):

1. Google the title and author. Often a link to the article comes up, particularly if the author posted it on platforms that support open access.
2. If the article is hosted by a journal that charges, consider paying the fee to download it.
3. Avoid the charge by visiting a nearby university library or public library to see if you can use their online databases to retrieve it for free (and to look at further research!).
4. Google the author's name and university to find an email, and then directly request a free copy from the author as a PDF.

If you like some of the studies and have ideas for future studies, let the authors and myself know. Bridging the academic-practice gap is essential if we are going to strengthen FOI and make the world better!

FOI Makes a Difference

Studies to convince the public and lawmakers that transparency has concrete societal benefits!

- **Reduces corruption and improves financial management (analysis of 187 FOI studies)**
Cucciniello, M., Porumbescu, G., and Grimmelikhuijsen, S. (2017). 25 years of transparency research: evidence and future directions. *Public Administration Review*, 77(1), 32-44.
- **Posting of sex offender registries online pressures sex offenders to avoid relapsing**
Levenson, J. and Cotter, L. (2005). The effect of Megan's Law on sex offender reintegration. *Journal of Contemporary Criminal Justice*, 21(1), 49-66.
- **Reduces drinking water health violations**
Bennear, L. and Olmstead, S. (2008). The impacts of the "Right to Know": Information disclosure and the violation of drinking water standards. *Journal of Environmental Economics and Management*, 56, 117-130.
- **Decreases consumer complaints through open food safety inspection records**
Almanza, B., Ismail, J., and Mills, J. (2002). The impact of publishing foodservice inspection scores. *Journal of Foodservice Business Research*, 5, 45-62.
- **Proactive release of benefits statements increases public confidence in Social Security**
Cook, F., Jacobs, L., Kim, D. (2010). Trusting what you know: information, knowledge and confidence in Social Security. *Journal of Politics*, 72(2), 397-412.
- **Two-thirds of citizen requests have a public good, according to analysis of one million record requests in Mexico**
Berliner, D., Bagozzi, B., and Palmer-Rubin, B. (2018). What information do citizens want? Evidence from one million information requests in Mexico. *World Development*, 109, 222-235.
- **Public records are central to 90 percent of the stories submitted to the Investigative Reporters and Editors annual contest, and 70 percent of those result in real change (new legislation, fired/imprisoned officials, routing of bad practices)**
Lanosga, G. and Martin, J. (2017). Journalists, sources, and policy outcomes: Insights from three-plus decades of investigative reporting contest entries. *Journalism*, 19(12), 1676-1693.
- **For every dollar spent on records-based investigative reporting, society reaps \$287 in concrete benefits (spectacular ROI!)**
Hamilton, J. (2016). *Democracy's Detectives: The Economics of Investigative Journalism*. Cambridge: Harvard University Press.
- **When newspapers, which use records to watch the government, close, the cost of municipal bonds increase because of increased inefficiencies, costing taxpayers money**
Gao, P., Lee, C. and Murphy, D. (2018). Financing Dies in Darkness? The Impact of Newspaper Closures on Public Finance. <https://www.brookings.edu/wp-content/uploads/2018/09/WP44.pdf>

Rating the States

Attempts to rate states' transparency by looking at the laws, websites, and asking experts.

- **State websites rated for how much financial information they proactively post**
Follow the Money (2018). U.S. Public Interest Research Group report available at <https://uspirgedfund.org/reports/usf/following-money-2018>
- **Experts rate the states on their FOI laws and compliance with the law – many fail**
Center for Public Integrity (2015). How does your state rank for integrity?
Available at <https://publicintegrity.org/accountability/how-does-your-state-rank-for-integrity/>
- **Brechner Center state FOI law ratings thorough, but ended in 2008**
Citizen Access Project (2008). Do you in the sunshine or the shade? University of Florida Brechner Center for Freedom of Information. Available through the Wayback Machine at <https://web.archive.org/web/20090402105406/http://www.citizenaccess.org/>
- **Rating five legal provisions in state laws: 38 out of 50 states earn an “F”**
Better Government Association and NFOIC (2007). States Failing FOI Responsiveness, a report by Charles N. Davis and the National Freedom of Information Coalition. Available at <https://www.nfoic.org/states-failing-foi-responsiveness>
- **Rating the states' actual compliance with FOI law, analyzing 7,000 MuckRock requests**
Findings to be presented June 27, 2019, at the Global Conference on Research Transparency in Rio de Janeiro by David Cuillier (Spoiler: many states in the South really need some work, and attorney fee-shifting laws make a difference)

Record Album

A variety of studies compare how the states handle various exemptions and records. Use these to leverage better legislation or to fight against bad proposals.

- **Penalties vary widely in state laws, are weak and rarely enforced**
Stewart, D. (2010). Let the sunshine in, or else: An examination of the “teeth” of state and federal open meetings and open records laws. *Communication Law and Policy*, 15, 265-310. See, also:
Marzen, C. (2017). Public record denials. *New York University Journal of Law and Liberty*, 11, 966-1027.
- **State copy fee provisions vary widely and arbitrarily used**
Lee, T. (2016). Public records fees hidden in the law: A study of conflicting judicial approaches to the determination of the scope of imposable public records fees. *Communication Law and Policy*, 21(2), pp. 251-279.
- **How states handle access to economic development records**
Edmondson, A. & Davis, C.N. (2011). Prisoners of private industry: Economic development and state sunshine laws. *Communication Law and Policy*, 16, 317-348.

- **Records sent on officials' personal electronic devices, by the state**
Senat, J. (2014). Whose business is it: Is public business conducted on officials' personal electronic devices subject to state open records laws? *Communication Law and Policy*, 19, 293-326.
- **Email records, by the state**
Youm, K.H. (2014). Access to email and the right of privacy in the workplace. In *Transparency 2.0: Digital Data and Privacy in a Wired World*, Davis C.N. & Cuillier, D. (eds). 97-114.
- **Privatization of records through trade secrets, by state**
Stewart, D. and Sanders, A.K. (2019). Countering the privatization of public records: How trade secrets, purported competitive harm and third-party interventions keep government business in the dark. Presented at the National Freedom of Information Coalition summit, April 12, 2019, Dallas, Texas.
- **Private universities' campus police records, by state**
Moore, J. (2019). Out from the curtains of secrecy: Private university police and state open records laws. Presented at the National Freedom of Information Coalition summit, April 12, 2019, Dallas, Texas.
- **SLAPP suits around the nation in a FOI context**
File, P.C. and Wigren, L. (2019). SLAPP-ing back: Are government lawsuits against records requesters strategic lawsuits against public participation? National Freedom of Information Coalition summit, April 12, 2019, Dallas, Texas.
- **Home addresses exempted in public record laws around the country, an inventory**
Gil, J.M. (2019). Privacy vs. transparency: Tracing home address exemptions in state FOI laws. Presented at the National Freedom of Information Coalition summit, April 12, 2019, Dallas, Texas.
- **Access to legislative records around the nation, by state**
Mulvey, R. and Valvo, J. 'Opening the state house doors': Examining trends in public access to legislative records. Presented at the National Freedom of Information Coalition summit, April 12, 2019, Dallas, Texas.
- **Access to public university foundation records in the nation**
Capeloto, A. (2015). A case for placing public-university foundations under the existing oversight regime of freedom of information laws. *Communication Law and Policy*, 20, 311-342. Also, see:
Reinardy, S. and Davis, C.N. (2005). A real home field advantage: Access to public university foundation records. *Journal of Law and Education*, 34(3), 389-420.
- **How various states set up records ombudsman programs – different types**
Stewart, D.R. (2009). Managing conflict over access: A typology of sunshine law dispute resolution systems. *Journal of Media Law and Ethics*, 1(1/2), 49-82. Also: Stewart, D.R. (2013). Evaluating public access ombuds programs: An analysis of the experiences of Virginia, Iowa and Arizona in creating and implementing ombuds offices to handle disputes arising under open government laws. *Journal of Dispute Resolution*, 2012(2). Available at
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2440820

Request Strategies

Research to assist citizens and journalists in crafting letters that produce results.

- **Formal letters three times more effective than informal email requests**
Worthy, B. John, P., & Vannoni, M. (2016). Transparency at the parish pump: A field experiment to measure the effectiveness of freedom of information requests in England. *Journal of Public Administration Research and Theory*, 27(3), 485-500.
- **Legalistic letters result in faster response and more compliance than friendly letters**
Cuillier, D. (2006). Honey v. vinegar: Testing compliance-gaining theories in the context of freedom of information laws. *Communication Law and Policy*, 15(3), 203-229.
- **Letters from women with higher social status result in better response (73 percent compliance for those with a Ph.D. versus 57 percent for those without)**
Michener, G. & Rodrigues, K. (2015). Who wants to know? Assessing discrimination in transparency and freedom of information regimes. Presented at the 4th Global Conference on Transparency Studies, Switzerland, June 4-6, 2015.
- **Requester who has a name with clout results in lower fees than average schmuck**
Lagunes, P. & Pocasangre, O. (2017). Dynamic transparency: An audit of Mexico's Freedom of Information Act. American Development Bank paper, IDB-WP-836.
- **More specifics to help custodians find the records result in better compliance**
Columbia Journalism Review textual analysis of 33,000 FOIA requests
<https://www.cjr.org/analysis/foia-request-how-to-study.php>
- **Custodians are more helpful to those who are specific, sympathetic and explain why they want the records**
Bush Kimball, M. (2003). Law enforcement records custodians' decision-making behaviors in response to Florida's public records law. *Communication Law and Policy*, 8, 313-360.
- **Agencies more likely to respond if mention other agencies that have complied (peer pressure), particularly if they are neighboring agencies**
ben-Aaron, J., Denny, M., Desmarais, B., & Wallach, H. (2017). Transparency by conformity: A field experiment evaluating openness in local governments. *Public Administration Review*, 77(1), 68-77.
- **Simple, free letters appealing denials cuts loose records a third of the time (but only 4% of requesters actually appeal)**
Bridis, T. (2018 March 12). U.S. sets new record for censoring, withholding gov't files. The Associated Press.
<https://www.apnews.com/714791d91d7944e49a284a51fab65b85>
- **Glomar responses creeping into the state/local level (don't let it!)**
Wagner, A.Jay (2016). Controlling discourse, foreclosing recourse: The creep of the Glomar response. *Communication Law and Policy*, 21(4), 539-567.

Context and Justification

Remind the public and legislators why we have these laws, and why transparency should be the default not a special right or extra benefit.

- **Congress intended records to be disseminated freely to the public since the 1800s (so why have fees now?)**
Quinn, A. (2003). Keeping the citizenry informed: early congressional printing and 21st century information policy. *Government Information Quarterly*, 20, 281-293.
- **Copy fees recoup a tiny percentage of the costs – just .01 percent (so why have fees?)**
Wagner, A.J. (2017). Essential or extravagant: Considering FOIA budgets, costs and fees. *Government Information Quarterly*, 34(3), 388-395.
- **Many nations (not the U.S. or its states) have declared FOI a human right, like equality and freedom from torture. Why not us?**
McDonagh, M. (2013). The right to information in international human rights law. *Human Rights Law Review*, 31(1), 25-55. Available at <http://www.corteidh.or.cr/tablas/r30698.pdf>
- **U.S. FOIA, on paper, is rated among the weakest laws in the world, at 69th place, below Russia, Mexico, and Uganda**
Global Right to Information Rating (2018). Access Info Europe and Centre for Law and Democracy. Available at <http://www.rti-rating.org/country-data/> Also, see:
Mendel, T. (2016). The fiftieth anniversary of the Freedom of Information Act: How it measures up against international standards and other laws. *Communication Law and Policy*, 21(4), 465-491.
- **Not a “media” issue. Only 2-14 percent of requests are submitted by journalists**
Kwoka, M. (2016). FOIA, Inc. *Duke Law Journal*, 65. Also, see:
Silver, D. (2016). The news media and the FOIA. *Communication Law and Policy*, 21(4), pp. 493-514.
- **Corporate lobby, year-by-year, has carved out exemptions for their own interests**
Relly, J.E. and Schwalbe, C.B. (2016). How business lobby networks shaped the U.S. Freedom of Information Act: An examination of 60 years of congressional testimony. *Government Information Quarterly*, 33(3), 404-416.
- **Transparency works best when government leaders outline benefits, respond meaningfully, support the concept and incentivize openness**
Williamson, V. and Eisen, N. (2016). *The impact of open government: Assessing the evidence*. Center for Effective Public Management at Brookings Institution.
- **Transparency varies by community, regardless of the text of the law, based on culture**
Grimmelikhuijsen, S., Porumbescu, G., Hong, B., and Im, I. (2013). The effect of transparency on trust in government: A cross-national comparative experiment. *Public Administration Review*, 73(4).

- **Communities with female mayors are more transparent than those with male mayors**
 Spac, P., Voda, P., and Zagrapan, J. (2018). Does the freedom of information law increase transparency at the local level? Evidence from a field experiment. *Government Information Quarterly*, 35, 408-417.
- **Larger cities better at complying with requests than small towns (Slovakia experiment)**
 Spac, P., Voda, P., and Zagrapan, J. (2018). Does the freedom of information law increase transparency at the local level? Evidence from a field experiment. *Government Information Quarterly*, 35, 408-417.
- **Communities with more competing groups post more information proactively**
 Armstrong, C. (2008). Exploring a two-dimensional model of community pluralism and its effects on the level of transparency in community decision making. *Journalism and Mass Communication Quarterly*, 85(4), pp. 807-822.
- **Agencies with online portals respond better than those without (Brazil experiment)**
 Bizzo, E. and Michener, G. (2017). Forest governance without transparency? Evaluating state efforts to reduce deforestation in the Brazilian Amazon. *Environmental Policy and Governance*, 27, 560-574.
- **FOI laws can harm access to records (after FOIA laws adopted reporters reported difficulty getting information because officials now had a legal reason to stonewall)**
 Camaj, L. (2015). Governments' uses and misuses of freedom of information laws in emerging European Democracies: FOI laws' impact on news agenda-building in Albania, Kosovo, and Montenegro. *Journalism and Mass Communication Quarterly*, 93(4), pp. 923-945.
- **Some recommend scrapping FOI laws and starting over with proactive records posting**
 Pozen, D. (2017). Freedom of information beyond the Freedom of Information Act. *University of Pennsylvania Law Review*, 165, pp. 1097-1158.
- **Agency centralization of information release through PIOs hampers newsgathering**
 Carlson, C., & Cuillier, D. (2017). Public information officers exert increasing controls. *Newspaper Research Journal*, 38(2), 198-214. See, also, <https://www.spj.org/pios.asp#surveys>
- **FOIA has so many problems many journalists don't even bother using it**
 Bluemink, E. & Brush, M. (2005). A flawed tool: Environmental reporters' experience with the Freedom of Information Act. Society of Environmental Journalists report, available at http://www.sej.org/foia/SEJ_FOIA_Report2005.pdf
- **Third of reporters don't know how to request records; half never have, 17% don't care**
 Cuillier, D. (2011 May). *Pressed for time: U.S. journalists' use of public records during economic crisis*. Global Conference on Transparency Research, Newark, NJ.

- **Agencies more likely to deny minorities (audit of 14 countries found agencies complied with journalists 26% of the time, non-profits 32%, and minority citizens 11%)**
 Darbshire, H. and Carson, T. (2006). Transparency and silence: a survey of access to information laws and practices in 14 countries. Open Society Justice Initiative. Available at <https://www.issuelab.org/resources/7736/7736.pdf>
- **When governments crack down on information release, records invariably pop out elsewhere (e.g., WikiLeaks); increased information control often backfires**
 Hobbs, W. and Roberts, M. (2018). How sudden censorship can increase access to information. *American Political Science Review*, 112(3), pp. 621-636.
- **FOIA lawsuits more than double in 10 years; little research on state/local litigation**
 Mehta, C. (2018). FOIA lawsuits reach record highs in FY 2018. Transactional Records Access Clearinghouse, Nov. 12, 2019.
<http://foaproject.org/2018/11/12/annual-report-foia-lawsuits-reach-record-highs-in-fy-2018/>

Public Attitudes

Looking to target new volunteers and donors? Focus on those most likely to join the cause.

- **Older, affluent, educated tend to support FOI more than others**
 Cuillier, D., & Piotrowski, S. J. (2009). Internet information seeking and its relation to support for access to government records. *Government Information Quarterly*, 26(3), 441-449.
- **Also, liberal, skeptical and cynical more supportive of FOI**
 Cuillier, D., & Pinkleton, B. (2011). Suspicion and secrecy: Political attitudes and their relationship to support for freedom of information. *Communication Law and Policy*, 16(3), 227-254.
- **Those engaged in civic affairs more supportive of FOI**
 Cuillier, D. (2008). Access attitudes: A social learning approach to examining community engagement and support for press access to government records. *Journalism and Mass Communication Quarterly*, 85(3), 549-576.
- **Heavy users of the Internet for information seeking more supportive of FOI**
 Cuillier, D., & Piotrowski, S. J. (2009). Internet information seeking and its relation to support for access to government records. *Government Information Quarterly*, 26(3), 441-449.
- **Those fearful of privacy invasion less supportive of FOI**
 Cuillier, D. (2004). Public support for press access declines as personal privacy concerns increase. *Newspaper Research Journal*, 25(4), 95-103.

- **During times of mortal strife (911), death thoughts cause polarization on FOI support**
Cuillier, D., Duell, B., & Joireman, J. (2009). FOI friction: The thought of death, national security values, and polarization of attitudes toward freedom of information. *Open Government*, 5(1).
- **Support varies by type of record – high support for open public safety records, low support for personal-type records (e.g., divorce, property tax)**
Cuillier, D. (2008). Access attitudes: A social learning approach to examining community engagement and support for press access to government records. *Journalism and Mass Communication Quarterly*, 85(3), 549-576.
- **Focus on practical benefits to root out corruption, make government work better**
Rosenberg, L. (2018). Despite skepticism, voters believe government accountability is possible. Open the Government. Available at <https://www.openthegovernment.org/2018/05/30/despite-skepticism-voters-believe-government-accountability-is-possible/>